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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,257	01/06/2004	Mark Girard	10123/04001	4003
7590 12/10/2008				
Patrick J. Fay, Esq. FAY KAPLUN & MARCIN, LLP Suite 702 150 Broadway New York, NY 10038				
EXAMINER				
GRAY, PHILLIP A				
ART UNIT		PAPER NUMBER		
3767				
MAIL DATE		DELIVERY MODE		
12/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/752,257

**Applicant(s)**

GIRARD ET AL.

**Examiner**

Phillip Gray

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_
- Page No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to applicant's communication of 9/22/2008. Currently amended claims 1-18 are pending and stand rejected below. This Office action is a non-final office action. The finality of the last action is withdrawn due to a new rejection with newly found prior art.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Sampson (U.S Patent 5,092,849). Sampson discloses an access port (see figures 10-12B) comprising a housing (52) with opening (32), a septum (34) mounted within housing (see figure 12a) with an operable surface (92), attachment surface (near 82 that is near 40 towards base of housing (40/42) and on 94 side), and chamfer (near 82 towards the opening and operable surface (92). It is examiners position that figure 12a shows that the annular surface extends radially beyond a periphery of the operative surface and separated in a direction perpendicular to that annular surface and coupled by the annular surface, (see figure 12a and 12b), and further that when septum is mounted in housing there is a force oriented substantially perpendicular to the annular

plane (force near 28) and the chamfered portion redirects the force to compress the operative surface in a substantially parallel to the annular surface (note change in shape and orientation from septum in figure 12b and when mounted in figure 12a).

Concerning claim 2 note second opening near 43. Concerning claim 3 note seat on interior of housing near 40 and cover 30. Concerning claim 4-5 note angled surface in figure 12a near 82 towards the opening and operable surface (92). Concerning claim 6 and 16-17 note stepped chamfer (chamfer 82 as discussed above and stepped portion 86). Concerning claim 7-8, 15 see figure 12b of chamfer on the peripheral edge of 93 and note curved constant radius. Concerning claim 9 note septum 34 abuts septum seat (interior of housing near 40) of housing. Concerning claim 10 see figure 10. Concerning claim 11, 13, 14 compare figure 12b to 12a. Concerning claim 12 see rejection of claim 1 above. Concerning claim 18 see paragraphs at column 1 lines 25-30.

Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al. (U.S. Patent Number 5,989,216).

Johnson discloses an implantable infusion device with an access port (see figures 10 and 11). Johnson discloses an access port (as shown in figures 10 and 11) comprises a housing (130,132, 120 for example) with a first opening (area near 129), a septum (122) mounted with the housing, and attachment portion (lower unnumbered portion of septum 122) with a chamfer (angled cut in 122), and a second opening (unnumbered area near 150) that can connect to a catheter. Further Johnson discloses

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a septum seat (area which septum rest on) formed by a housing and an attachment portion (as in figures 10 and 11), which compresses the septum between. Johnson discloses a chamfer attachment portion that comprises a least one surface angled relative to the operative surface that forms a 45-degree angle and a stepped surface (angled cut between top half of septum and bottom portion of septum). Further the Johnson patent discloses a chamfer attachment portion comprising a curved fillet (curved portion extending from the top operative surface of 122 to the lower attachment/annular surface) with a substantially constant radius of curvature and an annular portion abutting a septum seat of the housing (area that 122 sits near element 137). Johnson discloses a substantial planar compressed membrane operative surface (top area of 122) (that permits penetration and reseal by a needle) overlying the first opening, with a dimension greater than the first opening dimension. Further Johnson discloses that the chamfered attachment portion redirects a portion of the force to compress the outer surface and is subject to a force oriented substantially perpendicular to the plane of the outer surface (see paragraphs beginning at column 4 through column 9). Johnson also discloses that the operative surface is formed of a flexible polymeric material (see paragraphs beginning at column 6 line 20-63).

Concerning the amended claims 1, 4, 9, and 12, examiner is defining "an annular surface" as shaped like or forming a ring and "extending radially" as "of, like, or pertaining to a radius or a ray". Under this reading of the claims as currently amended, Johnson prior art discloses does disclose "an annular surface extending radially beyond a periphery of the operative surface and separated from the operative surface in a

direction substantially perpendicular to the annular surface, the annular surface being coupled to the operative surface by the chamfer” and the “operative surface in a direction substantially parallel to the annular surface” (see figure 10-11). It is the examiners position that the housing, septum, annular surface, and attachment portion are fully capable of satisfying all structural, functional, operational, and spatial limitations. The current amended claim limitations do not overcome and distinguish over the prior art of record.

Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiita et al. (U.S. Patent Number 4,772,270), or Bark (U.S. Patent Number 4,904,241) alone. For the same reasons as stated in the above rejections, Wiita or Bark each disclose a septum with an operative surface (Wiita 70, Bark 34), a chamfer portion (Wiita 24, Bark near 36), and annular/attachment portion (Wiita near 72, Bark near 18). The elements disclosed in Wiita and Bark are fully capable of satisfying all structural, functional, spatial, and operational limitations in the amended claims, as currently written, and the rejection is made.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571)272-7180.

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The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phillip Gray/  
Examiner, Art Unit 3767  
/Kevin C. Simons/  
Supervisory Patent Examiner, Art Unit 3767